



Georgetown University Law Center
Scholarship @ GEORGETOWN LAW

2009

Telework in the Federal Government: The Overview Memo

Workplace Flexibility 2010, Georgetown University Law Center

This paper can be downloaded free of charge from:
<http://scholarship.law.georgetown.edu/legal/16>

This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author.
Follow this and additional works at: <http://scholarship.law.georgetown.edu/legal>



Part of the [Labor and Employment Law Commons](#), [Labor Relations Commons](#), and the [Public Policy Commons](#)

Telework in the Federal Government: The Overview Memo

Flexible Work Arrangements (FWAs) alter the time and/or place that employees work on a regular basis in a manner that is manageable and predictable for both employees and employers.¹ Telework, also called telecommuting, refers to an FWA that enables an employee to work from an alternative place to the employer's usual worksite, typically home or a satellite work center. Telework technically refers to work performed with the use of a telecommunications connection to the workplace (e.g., computer, telephone), but the term is also used more generally to describe any type of work done from a remote location.

Telework can provide many benefits to employees, employers and society as a whole, including work and family balance, increased accommodations for people with disabilities, alleviation of significant commuting/transportation challenges, cost reduction, reduced carbon emissions, and emergency preparedness. There remain, however, challenges to implementing telework in an effective and systematic fashion.

The federal government has employed a range of public policy approaches to increase access to telework, including legislation, appropriations and guidance from the Office of Personnel Management (OPM) and the General Services Administration (GSA). Although the results of the government's policies have varied among federal agencies, the government's approach serves as an important case study of the utility of various public policy approaches to increase access to and utilization of telework, as well as other FWAs.

The purpose of this memorandum is to provide an overview of the federal government's use of telework arrangements. This memo:

- explains telework and the benefits it offers to employers, employees and society;
- sets forth the federal government's current policies for offering telework options to employees and provides a status update on the current use of telework in the federal government; and
- describes common challenges that federal employers experience when implementing telework programs and highlights characteristics that have helped certain agencies implement successful telework programs.

¹ See <http://www.law.georgetown.edu/workplaceflexibility2010/definition/fwa.cfm>.

I. Telework Overview

A. What is Telework

Telework, also called telecommuting, is a flexible work arrangement (FWA) that allows an employee to work somewhere other than the employer's typical office location.² In addition to working from home, a variety of alternative worksites also exist for teleworkers. Telework options include "hot desking," "hoteling," virtual offices, and telework centers.³

- *Hot desking* is an employment situation in which an employee works in a main office part of the time and from a remote location the remainder of the time. When the employee is in the main office, he or she uses a non-dedicated, non-permanent workspace assigned for use by reservation on an as-needed basis, as opposed to having a reserved office space that goes unused when the employee is teleworking.⁴
- *Hoteling* is similar to hot desking. However, employees must reserve the space they are going to work in ahead of time.⁵
- *Telework centers* are facilities that provide workstations and other office facilities/services that employees from several organizations can use.⁶
- *Virtual Offices* are virtual work environments in which employees can work cooperatively from different locations using a computer network.⁷

An employee can use any of these telework options in conjunction with other forms of FWAs, such as flextime or part-time work.

B. Benefits of Telework

Employers are increasingly offering telework arrangements because of the benefits it produces. For example, the federal government uses telework as a tool for recruiting and retaining talented employees.⁸ Telework can also increase productivity while

² See Workplace Flexibility 2010, *Telecommuting: A Case Study in Public Policy Approaches* (2006), available at

http://www.law.georgetown.edu/workplaceflexibility2010/definition/general/C_Memo_TeleComm.pdf.

³ See Federal Management Regulation, Guidelines for Alternative Workplace Arrangements, FMR Bulletin 2006–B3, 71 Fed. Reg. 52 (March 17, 2006), pp. 13845, available at

http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/FMRBulletin_%202006-B3_Updated_R25U8_0Z5RDZ-i34K-pR.doc

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ See *Status of Telework in the Federal Government: Report to Congress*, U.S. Office of Personnel Management, at 2 (December 2008), available at http://www.telework.gov/Reports_and_Studies/Annual_Reports/2008teleworkreport.pdf (hereinafter

decreasing costs for office space, and can ensure continuity of business operations during an emergency.⁹ Employees benefit from a better work/life balance, improved morale, and reduced commuting and transportation costs.¹⁰ Finally, society at large benefits from reduced traffic congestion and emissions, emergency preparedness (i.e. pandemic response) and reduced infrastructure impact in urban areas.¹¹

II. Telework Policies in The Federal Government

The federal government was an early leader in telework, adopting and implementing new laws and policies to address the needs of the federal workforce. The following section provides an overview of the history, legislation, agency guidance, and appropriations implemented to bolster telework in the federal government.

A. A History of Telework in the Federal Workforce: The 1990s

1. Flexiplace Pilot Projects

In 1990, the Office of Personnel Management (OPM), in conjunction with the General Services Administration (GSA), initiated the Federal Flexible Workplace Pilot Project to assess the benefits and challenges of allowing employees to work at locations other than their government office base (so-called “flexiplace”).¹² According to OPM and GSA, the administrative rationales behind sponsoring flexiplace programs were to improve the retention and recruitment of employees, increase productivity, and reduce the expanding needs for office space.¹³ Early monitoring of the pilot indicated both difficulties in facilitating flexiplace participation as well as some preliminary benefits.

Originally, the government expected about 2,000 federal workers to be involved in the pilot project. However, as of February 1992, only about 550 employees were participating in the pilot project. Most of these employees were from the Environmental Protection Agency, the Equal Employment Opportunity Commission (EEOC), the Department of Health and Human Services, and the Department of Agriculture.¹⁴

Status of Telework 2008). According to a report conducted by the General Accountability Office (GAO), 53% of all federal employees with dependent care needs said that workplace flexibility options were an important factor in accepting employment with the government and 67% said it was an important factor in their decision to continue to work in the public sector. U.S. Gen. Accountability Office, “An Assessment of Dependent Care Needs of Federal Workers Using the Office of Personnel Management’s Survey,” GAO-07-437R007) at 34, available at <http://www.gao.gov/new.items/d07437r.pdf>.

⁹ See *Status of Telework 2008*, at 2.

¹⁰ *Id.*

¹¹ *Id.* In 2007 60% of federal agencies reported that telework was fully integrated into their COOP/emergency planning, up from 42% in 2006. *Id.*

¹² U.S. General Accounting Office, *Report to the Ranking Minority Member, Subcommittee on Civil Service, Committee on Government Reform and Oversight, House of Representatives, Federal Workforce: Agencies’ Policies and Views on Flexiplace in the Federal Government*, GAO/GGD-97-116, 1997 (hereinafter “GAO Report 1997”) at 1, available at <http://www.gao.gov/archive/1997/gg97116.pdf>.

¹³ GAO Report 1997 at 5.

¹⁴ U.S. General Accounting Office, *Report to Congressional Committees, The Changing Workforce: Comparison of Federal and Nonfederal Work/Family Programs and Approaches*, GAO/GGD-92-84, 1992 at 82, <http://www.fas.org/irp/gao/ggd94055.htm>.

Despite the low level of utilization, the initial evidence from the pilot project indicated that flexiplace initiatives could improve productivity and lower costs.¹⁵ For example, the EEOC found that productivity among the investigators who participated in the flexiplace pilot program improved, as measured by the increased number of interviews they conducted while participating in the program.¹⁶ The Defense Investigative Service found that allowing special agents and industrial security specialists to work out of their homes eliminated office space at government facilities that produced cost savings.¹⁷

A July 1997 Government Accountability Office (GAO) evaluation of employees' experiences with "flexiplace" policies revealed many of the anticipated benefits of this FWA: reduced commuting time; lowered personal costs for items such as transportation, parking, food and wardrobe; and improvement in the quality of work-life and morale accruing from the employee's opportunity to better balance work and family demands.¹⁸ A 1998 OPM assessment found that 73% of surveyed agencies reported implementing some flexiplace program.¹⁹

2. Infrastructure Funding: The 1990s

Based on the early successes of the OPM pilot project, Congress sought to use its power of appropriations to enable and encourage federal agencies to fund the phone lines and equipment, computer connection fees, and telework centers that would be needed to support "flexiplace" workers effectively.

The Treasury, Postal Service, and General Government Appropriation Act of 1990 was the first Congressional act to explicitly include funds for "flexiplace" arrangements.²⁰ The Treasury, Postal Service, and General Government Appropriations Act of 1996 provided that any federal employer could use federal funds to install telephone lines and other equipment in an employee's home, and could pay the monthly service charges for such lines and equipment, for federal employees authorized to use telework.²¹ Before funds could be used for such purposes, the agency head was required to certify that: 1)

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ GAO Report 1997 at 12. This evaluation was based primarily on five federal departments and three independent agencies. Additionally, people with disabilities experienced some reduction in the workforce participation barriers they faced. *Id.*

¹⁹ This data was based on the response of 61 federal agencies, which collectively represented approximately 95% of the federal workforce, excluding the U.S. Postal Service. See U.S. Office of Personnel Management, *A Review of Federal Family-Friendly Workplace Arrangements* (1998). While 73% of the agencies reported implementing some flexiplace program, as the data below indicate, most federal employees still do **not** telework.

²⁰ Treasury, Postal Service, and General Government Appropriations Act of 1991 § 624 (enacted as Pub. L. No. 101-509, 104 Stat. 1389 (1990)).

²¹ See Treasury, Postal Service, and General Government Appropriations Act of 1996 § 620, 31 U.S.C. §1348 note (2000) (enacted as Pub. L. No. 104-52, 109 Stat. 468 (1995)).

the agency had implemented adequate measures against misuse of funds and 2) the “service” was necessary to directly support the agency’s mission.²²

The Omnibus Consolidated Appropriations Act of 1997 allowed GSA to create telework centers for use by federal, state, and private sector employees (with priority for federal employees).²³ The Act also required that executive agency heads contemplating the acquisition of additional physical workspace had to consider whether telework centers would satisfy their need instead.²⁴

Finally, beginning in fiscal year 1999, Congress created a more direct incentive for agencies by setting aside \$50,000 of the funds annually appropriated to each agency for the agency to spend on employee usage of federal telework centers.²⁵

3. Presidential Directives: The 1990s

While OPM conducted its pilot “flexiplace” projects and Congress allocated funding for telework infrastructure during the 1990s, President William J. Clinton emphasized flexible working arrangements, including telework, as a component of his Administration’s employment policy.

A September 1993 report by Vice President Al Gore and the National Performance Review (NPR) expressed concern with the limited use of family-friendly workplace options in the federal government. The NPR urged President Clinton to use his office to encourage the expanded use of these options within the executive branch.²⁶ The report recommended that “[t]he President should issue a directive requiring that all agencies adopt compressed/flexible time, part-time, and job-sharing work schedules.”²⁷ Agencies were also “asked to implement flexiplace and telework policies, where appropriate.”²⁸

²² *Id.*

²³ See Omnibus Consolidated Appropriations Act of 1997, tit. IV, § 407(a), 40 U.S.C. § 587 (2000) (enacted as Pub. L. No. 104-208, 110 Stat. 3009 (1996)). GSA was also given authority to provide assistance and oversight regarding the establishment and operation of “alternative workplace arrangements,” which included “telecommuting, hoteling, virtual offices, and other distributive work arrangements.” *Id.*

²⁴ *Id.*

²⁵ See Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 § 630, 40 U.S.C. § 587 note (2000) (enacted as Pub. L. No. 105-277, 112 Stat. 2681 (1998)). This statute defines executive agencies to include the Departments of State, Treasury, Defense, Justice, Interior, Labor, Health and Human Services, Agriculture, Commerce, Housing and Urban Development, Transportation, Energy, Education, and Veterans' Affairs; General Services Administration; Office of Personnel Management; Small Business Administration; Social Security Administration; Environmental Protection Agency; and U.S. Postal Service. *Id.*

²⁶ National Performance Review (NPR), *From Red Tape to Results: Creating a Government that Works Better and Costs Less*, September 1993, available at <http://govinfo.library.unt.edu/npr/whowere/historypart1.html>; General Accounting Office, *Alternative Work Schedules: Many Agencies Do Not Allow Employees the Full Flexibility Permitted by Law*, Letter 6, March 1994, available at <http://www.fas.org/irp/gao/ggd94055.htm>.

²⁷ National Performance Review (NPR), *From Red Tape to Results: Creating a Government that Works Better and Costs Less*, at Ch. 3, *Empowering Employees to Get Results Part III*.

²⁸ *Id.*

In a Presidential Memorandum issued in 1994, President Clinton directed executive agencies "... to establish a program to encourage and support the expansion of flexible family-friendly work arrangements" including both telework and satellite work locations.²⁹ He encouraged agency heads to identify positions that were suitable for flexible work arrangements, adopt relevant employment policies, provide training to support employees' use of those arrangements, identify barriers to implementation, and recommend solutions to the President.³⁰

In a follow-up memorandum issued in 1996, President Clinton again emphasized the utilization of telework as a means of creating family-friendly work arrangements, and directed agencies to report the results of a policy review within 120 days of the issuance of his memorandum.³¹

B. Telework Policies in the Federal Workforce in the 21st Century

1. Legislation: Department of Transportation and Related Agencies Appropriations Act of 2001

In the Department of Transportation and Related Agencies Appropriations Act of 2001, Congress required all executive agencies to establish policies to allow "eligible employees" to telework "to the maximum extent possible without diminished employee performance."³² An "eligible employee" was defined as "any satisfactorily performing employee of the agency whose job may typically be performed (away from the office) at least one day per week."³³ The Act required OPM to ensure that these telework requirements were applied to 25% of the federal workforce within six months of enactment (by April 23, 2001), and to an additional 25% of employees every year

²⁹ The memorandum indicated that it did not create "any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person." See Memorandum, *Expanding Family-Friendly Work Arrangements in the Executive Branch*, 59 Fed. Reg. 36,017 (July 11, 1994).

³⁰ See Memorandum, *Expanding Family-Friendly Work Arrangements in the Executive Branch*, 59 Fed. Reg. 36,017 (July 11, 1994). The President also directed OPM and GSA to "take all necessary steps to support and encourage the expanded implementation of flexible work arrangements," including reviewing existing regulations, proposing legislative changes, and assisting executive agencies in their implementation of the directive. *Id.*

³¹ William Jefferson Clinton, *Memorandum for the Heads of Executive Departments and Agencies: Implementing Federal Family Friendly Work Arrangements*, June 21, 1996 (not printed in the Federal Register) (available at <http://www.ibiblio.org/pub/archives/whitehouse-papers/1996/Jun/1996-06-21-Memorandum-on-Family-Friendly-Work-Arrangements>) (June 24, 1996). For a review of the implementation of these memoranda see, Office of Personnel Management (1998), *A Review of Federal Family-Friendly Workplace Arrangements*, available at <http://rop.sagepub.com/cgi/content/abstract/19/3/34>.

³² Department of Transportation and Related Agencies Appropriations Act of 2001, Pub. L. No. 106-346, § 359.

³³ See Joint Explanatory Statement of the Conferees accompanying H.R. CONF. REP. NO. 106-940, at 151.

thereafter.³⁴ The statutory provision created no individual, enforceable employee right to telework, but rather, put an obligation on agencies to offer and support telework by employees who could do so without diminished work performance.³⁵

2. OPM and GSA Guidance

In response to the 2001 Transportation Appropriations Act, which required OPM to ensure that all eligible federal employees were permitted to telework by 2004, OPM issued a telework manual for executive agencies.³⁶ In the manual, OPM provided general guidelines and processes for agencies to use in telework programs.

For example, the OPM manual provides guidance to agencies in determining whether an employee was eligible for telework. OPM suggests that *all* employees are eligible to telework *unless* the position requires “on a daily basis (i.e., every work day), direct handling of secure materials or on-site activity that cannot be handled remotely or at an alternative worksite...” or “[e]mployees whose last performance rating of record (or its equivalent) is below *fully successful* (or the agency’s equivalent) or whose conduct has resulted in disciplinary action within the last year.”³⁷ Agencies are not required to offer telework to ineligible employees and each agency supervisor ultimately has discretion over whether an employee is eligible.³⁸

OPM and GSA also developed a user-friendly website: www.telework.gov. This website is a resource for telework coordinators, as well as for managers and teleworkers who wish to learn more about implementing and working in a successful telework environment. The site includes information on seven key practices for a successful telework program: (1) a thorough planning process; (2) policy development; (3) performance management (of employees who telework and those who do not); (4) managerial support; (5) training and publicity; (6) development of a technology plan, and; (7) evaluation of the telework program.³⁹

3. Appropriations

In 2004, Congress began to get frustrated with the slow progress of agencies in implementing telework programs. Moving from the approach of the “carrot” to the “stick,” Congress began to withhold funds from specific agencies to more forcefully

³⁴ Department of Transportation and Related Agencies Appropriations Act of 2001, Pub. L. No. 106-346, § 359.

³⁵ *Id.*

³⁶ *Telework: A Management Priority, A Guide for Managers, Supervisors, and Telework Coordinators*, U.S. Office of Personnel Management, (May 2003) available at http://www.telework.gov/documents/tw_man03/prnt/manual.asp.

³⁷ *A Guide to Telework in the Federal Government*, Office of Personnel Management, available at <http://www.opm.gov/pandemic/agency2a-guide.pdf> at OPM-VI-I-4.

³⁸ *See id.*

³⁹ *See* http://www.telework.gov/tools_and_resources/key_practices/index.aspx.

encourage them to implement telework policies.⁴⁰ Appropriations legislation for FY2005 withheld \$5 million of the budgets of the Departments of Commerce, Justice, and State; the Judiciary; the Small Business Administration, and the Securities and Exchange Commission until such agencies certified that “telecommuting opportunities [were] made available to 100% of the eligible workforce.”⁴¹ Congress again required the agencies to appoint a telework coordinator and imposed quarterly Congressional reports on the status of their telework programs.⁴²

4. Initiatives to Expand and Improve Federal Telework Programs

OPM currently has a number of creative initiatives designed to increase the use of telework. For example, OPM is working with the Graduate School, USDA to develop training programs for managers and for agency and sub-agency telework coordinators.⁴³ To assist the agencies with the tracking of telework employees, OPM consults with payroll providers to improve data collection.⁴⁴ OPM has continued to collaborate with the Chief Human Capital Officers (CHCO) Council, including the CHCO Council Training Academy on flexible work initiatives.⁴⁵ Lastly, www.telework.gov was revamped in early 2008 and now provides an interactive Frequently Asked Questions (FAQ) tool, a database of agency telework coordinators, key practices for implementing telework programs, as well as tip sheets and training for managers and employees.⁴⁶

C. Recent Legislative Proposals to Increase Telework in the Federal Government

There were significant efforts in the 110th Congress to develop a comprehensive telework approach for federal government, although no legislation was ultimately enacted. Early in the 111th Congress, bills were again introduced to address telework activity in the federal government in a systematic manner.⁴⁷

⁴⁰ See Consolidated Appropriations Act of 2005 § 622, 5 U.S.C. § 6120 note (Supp. IV 2004) (enacted as Pub. L. No. 108-447, 118 Stat. 2809 (2004)).

⁴¹ *Id.*

⁴² *Id.*

⁴³ See *Status of Telework* 2008 at 3.

⁴⁴ *Id.*

⁴⁵ *Id.* “The Chief Human Capital Officers Act of 2002, enacted as part of the *Homeland Security Act of 2002* (Pub. L. No. 107-296) on November 25, 2002, required the heads of 24 Executive Departments and agencies to appoint or designate Chief Human Capital Officers (CHCOs). Each CHCO serves as his or her agency’s chief policy advisor on all human resources management issues and is charged with selecting, developing, training, and managing a high-quality, productive workforce.” Description available at <http://www.chcoc.gov/About.aspx>.

⁴⁶ See *Status of Telework* 2008 at 3.

⁴⁷ On March 25, 2009, S. 707 and H.R. 1722, regarding telework in the federal government were introduced. Additionally, three bills have been introduced in the 111th Congress regarding telework in the private sector. See H.R. 1107, 111th Cong. (2009) (to authorize telecommuting for federal contractors); H.R. 1329, 111th Cong. (2009) and S. 575, 111th Cong. (2009) (introducing bills to amend title 49, United States Code, to develop plans and targets for States and metropolitan planning organizations to develop plans to reduce greenhouse gas emissions from the transportation sector, and for other purposes).

S. 707, the Telework Enhancement Act of 2009, was introduced by Senator Akaka (D-HI) and Senator Voinovich (R-OH) in the Senate in March 2009.⁴⁸ The bill requires each executive agency, within six months of the law's enactment, to establish a telework policy, to determine all employees' eligibility to telework, and to notify all employees of their eligibility to telework.⁴⁹ The policy must ensure that telework will not diminish an employee's performance or an agency's operations and must require a mandatory written agreement between the agency manager and the teleworking employee.⁵⁰

In addition, each executive agency must ensure that "an interactive telework training program" is provided to employees eligible to participate in the telework program of the agency and to all managers of teleworkers.⁵¹ The agencies must also ensure that no distinction is made between teleworkers and nonteleworkers for purposes of performance review, training, rewarding, promoting, reassigning, work requirements and other acts involving managerial discretion.⁵² Finally, the telework policy must be incorporated as part of an agency's continuity of operations plan in the event of an emergency.⁵³

Under the bill, OPM is charged with providing policy and policy guidance for telework in the areas of pay and leave, agency closure, performance management, official worksite, recruitment and retention, and accommodations for employees with disabilities.⁵⁴ In consultation with the Federal Emergency Management Agency, OPM is responsible for devising policy and policy guidance in the areas of continuation of operations and long-term emergencies and with the GSA on policy guidance related to telework centers, travel, technology, equipment, and dependent care.⁵⁵ OPM's guidance and that of FEMA and GSA must be included on a telework website maintained by OPM.⁵⁶ The website must also include telework links and announcements.⁵⁷

The Act mandates the creation of a Telework Managing Officer for each executive agency.⁵⁸ The Telework Managing Officer must be established within the Office of Chief Human Capital Officer or comparable office.⁵⁹ The Telework Managing Officer's duties include policy development and implementation and serving as an advisor for agency leadership, a resource for managers and employees and a primary point of

⁴⁸ S. 707, 111th Cong. (2009).

⁴⁹ *Id.* at § 3(a)(1-2). Unless it is an emergency situation, the telework policy does not apply to employees of agencies responsible for the direct handling of secure materials or on-site activity that cannot be handled remotely. *Id.* at § 3(b)(4).

⁵⁰ S. 707 § 3(a)(1-3).

⁵¹ *Id.* at § 4(a).

⁵² *Id.* at § 4(a)(3)(A-D).

⁵³ *Id.* at § 3(b)(5).

⁵⁴ *Id.* at § 5(b).

⁵⁵ *Id.*

⁵⁶ *Id.* at § 5(d)(2)(C-d).

⁵⁷ *Id.* at § 5(d)(1-2).

⁵⁸ *Id.* at § 6(a)(1).

⁵⁹ *Id.*

contact for OPM on telework matters.⁶⁰ The bill requires OPM to assist each agency in establishing appropriate qualitative and quantitative measures and teleworking goals.⁶¹

OPM is also responsible for submitting a report addressing the telework programs of each executive agency to the relevant Congressional committees of jurisdiction (the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform).⁶² The required content of report is quite detailed -- it must include the level of participation by employees, including the number and percent of eligible employees in the agency who are teleworking 3 or more days per pay period; 1 or 2 days per pay period; once per month; and on an occasional, episodic, or short-term basis. The report must also include the methods for gathering data, the reasons for any positive or negative variation if the number of employees teleworking is 10% lower or higher than the previous year, the agency goal for increasing participation for the next reporting period, an explanation of why the agency met or didn't meet prior goals, best practices in the program and an assessment of the progress each agency made in meeting goals as well as the impact on emergency readiness, energy use, recruitment and retention, performance, productivity and employee attitudes and opinions regarding telework.⁶³

In the House of Representatives, H.R. 1722, the Telework Improvements Act of 2009 was introduced by Representative John Sarbanes (D-MD) and six original co-sponsors on the same day as S. 707.⁶⁴ The text of H.R. 1722 was not available as of the writing of this memo.

It is possible that H.R. 1722 will be similar to H.R. 4106, the Telework Improvements Act of 2008, sponsored by Representative Danny Davis (D-IL) in the 110th Congress.⁶⁵ H.R. 4106 required every executive agency to have a policy in place that conformed with regulations issued by the GSA (in coordination with OPM) that ensured employees were authorized to telework "to the maximum extent possible" without diminishing performance or agency operations.⁶⁶ The bill required that appropriate training be provided to supervisors and managers and to all employees authorized to telework and required the GSA (in coordination with OPM) to provide assistance and training to the agencies.⁶⁷ In addition, each agency was required to ensure that no distinction was

⁶⁰ *Id.* at § 6(b).

⁶¹ *Id.* at § 7(b).

⁶² *Id.* at § 7(b)(1)(A).

⁶³ *Id.* at § 7(b)(2). The Comptroller General is tasked with reviewing OPM's report and submitting a report to Congress on the progress of each executive agency. *Id.* at § 7(c)(2). In addition, the Chief Human Capital Officer of each executive agency is required to submit annual reports to the Chair and Vice Chair of the Chief Human Capital Officers Council on agency efforts to promote telework. *Id.* at § 7(d).

⁶⁴ H.R. 1722, 111th Cong. (2009). The six original cosponsors are Rep. Gerald Connolly (D-VA), Rep. Danny Davis (D-IL), Rep. Stephen Lynch (D-MA), Rep. James Moran (D-VA), Rep. Dutch Ruppersberger (D-MD), and Rep. Frank Wolf (R-VA).

⁶⁵ Telework Improvements Act of 2008, H.R. 4106, 110th Cong. (2007). The bill added a new Chapter 65 to title 5, part III, of the U.S. Code titled *Telework*.

⁶⁶ *Id.* at § 6502(a)(2)(B).

⁶⁷ *Id.* at § 6503(1)(A) and (2).

made between teleworkers and nonteleworkers for purposes of performance appraisals.⁶⁸

The bill also required GSA, in coordination with OMB and the National Institute of Standards and Technology, to create regulations that ensured security protections for information and information systems.⁶⁹ GSA was also responsible for maintaining a telework website (to be jointly controlled with OPM) that included any regulations relating to telework.⁷⁰

Each executive agency was given the option of appointing a Telework Managing Officer or simply having the duties of such an officer be carried out by the Chief Human Capital Officer of the agency.⁷¹ The Telework Managing Officer's duties included serving as an advisor to the head of such agency, as well as a resource on teleworking to managers, supervisors, and employees.⁷² The Telework Managing Officer also was to ensure that the telework policy was effectively communicated, that a tracking system for compliance with reporting requirements was developed and administered, and that barriers to telework were removed.⁷³

H.R. 4106 tasked the GAO with developing a system to evaluate the telework policies and employee participation in teleworking in each agency.⁷⁴ On an annual basis, the GAO was to report to Congress on the agencies' policies and compliance with the law.⁷⁵ Among the details in the report on each agency, GAO was to indicate the number of employees who were eligible to telework, the number who teleworked once a week regularly, the number who teleworked 20% of the hours that they worked in every two workweeks, the number who teleworked at least once a month, the number who were not eligible to telework, and the number of employees who had stopped teleworking.⁷⁶

H.R. 4106 also included a "Minimum Requirement for Compliance." An agency was not considered in compliance with the bill unless those employees who were *authorized* to telework were permitted to telework at least 20% of the hours worked every two workweeks.⁷⁷

The House of Representatives passed H.R. 4106 in June 2008. While a Senate bill, S. 1000, the Telework Enhancement Act of 2007,⁷⁸ was reported out of the Senate

⁶⁸ *Id.* at § 6503(1)(B).

⁶⁹ *Id.* at § 6503(3).

⁷⁰ *Id.* at § 6503(4).

⁷¹ *Id.* at § 6504(1) and § 6504(d).

⁷² *Id.* at § 6504(c)(1).

⁷³ *Id.* at § 6504(c)(2-9).

⁷⁴ *Id.* at § 6505(a)(1-2).

⁷⁵ *Id.* at § 6505(b)(1-4).

⁷⁶ *Id.* at § 6505(b)(2)(A-F). The report also had to include the extent to which barriers to telework had been identified and eliminated, the impact of telework on agency recruitment and retention and employee performance, and the employees' satisfaction with the telework policy. *Id.* at § 6505(b)(2)(G-J).

⁷⁷ *Id.* at § 6505(c).

⁷⁸ Telework Enhancement Act of 2007, S. 1000, 110th Cong. (2007). S. 1000 was sponsored by Senator Ted Stevens and co-sponsored by Senators Norm Coleman, Mary Landrieu, and George Voinovich.

Committee on Homeland Security and Governmental Affairs in October 2008, it was never acted upon by the full Senate.⁷⁹

Several proposals were also introduced in the 110th Congress to require incentive programs for federal agencies to encourage employees and contractors to reduce petroleum usage by telecommuting.⁸⁰ Numerous bills to promote telework in the private sector were also introduced.⁸¹

III. Status of Telework in the Federal Government and Continued Challenges

OPM provides an annual report to Congress on the status of telework in the federal government.⁸² The most recent report from December 2008 provides statistics for the year ending in December 2007.⁸³

According to the 2008 OPM report, 94,643 federal employees teleworked in 2007. This number represents only **7.62%** of all eligible employees.⁸⁴ Agencies are given the discretion to define which employees are “eligible” for telework. Of those employees

⁷⁹ Senate Report No. 110-526.

⁸⁰ Renewable Fuels, Consumer Protection, and Energy Efficiency Act of 2007, H.R. 6, 110th Cong. (2007); Renewable Fuels, Consumer Protection, and Energy Efficiency Act of 2007, H.R. 2950, 110th Cong. (2007); Renewable Fuels, Consumer Protection, and Energy Efficiency Act of 2007, S. 1419 110th Cong. (2007); Energy Efficiency Promotion Act, S. 1115, 110th Cong. (2007); Energy Savings Act of 2007, S. 1321, 110th Cong. (2007); and Energy Savings Act of 2007, H.R. 2556, 110th Cong. (2007).

⁸¹ See Public Contracts, H.R. 4779, 110th Cong. (2007) (proposes a bill stating that telecommuting by federal contractors is permissible and prohibits disqualification or discrimination against potential contractors that permit telecommuting); H. CON. RES. 224, 110th Cong. (2007) (supports employers allowing their employees to telework one day during a National Telework Week). Also, several bills have been introduced that would create telecommuting pilot programs to provide small businesses with information regarding telecommuting and encourage them to offer telecommuting options to employees. See Renewable Fuels, Consumer Protection, and Energy Efficiency Act of 2007, H.R. 6, 110th Cong. (2007); Renewable Fuels, Consumer Protection, and Energy Efficiency Act of 2007, H.R. 2950, 110th Cong. (2007); Small Business Energy Efficacy Act of 2007, S. 1657, 110th Cong. (2007). A telecommuting pilot program was also proposed in the Family and Workplace Balancing Act, H.R. 2392, 110th Cong. (2007); Small Business Telework Promotion Act, H.R. 5217, 110th Cong. (2007). Additionally, several proposals would provide financial or tax incentives to encourage telecommuting. See Renewable Energy, Fuel Reduction, and Economic Stabilization and Enhancement Act of 2007, S. 298, 110th Cong. (2007). See also Climate Matters Act of 2008, H.R. 6316, 110th Cong. (2008) (requires a percentage of funds deposited in the Transportation Alternatives Account to be used “to assist in reducing the direct and indirect greenhouse gas emissions of the regional transportation sector, through . . . telecommuting projects”); Parents’ Tax Relief Act of 2007, S. 816, 110th Cong. (2007); Parents’ Tax Relief Act of 2007, H.R. 1421, 110th Cong. (2007); Transportation and Housing Choices For Gas Price Relief Act of 2008, H.R. 6495, 110th Cong. (2008); Family Work Flexibility Act of 2008 of 2008, H.R. 7009, 110th Cong. (2008); Telecommuter Tax Fairness Act of 2007, S. 785, 110th Cong. (2007); Telecommuter Tax Fairness Act of 2007, H.R. 1360, 110th Cong. (2007); To prohibit a State from imposing a discriminatory commuter tax on nonresidents, and for other purposes, H.R. 2242, 110th Cong. (2008).

⁸² See *Status of Telework* 2008.

⁸³ *Id.*

⁸⁴ *Id.* at 2.

who telework, more than 60% of them (8% more than in 2006) do so frequently -- 1 or more days per week.⁸⁵

The report also indicates that most federal agencies maintained or slightly increased their use of telework over the year.⁸⁶ Emergency preparedness accounts for some of this increase. For example, 60% of agencies report that they use telework programs in their emergency plans.⁸⁷ This is a 25% increase from the previous two years.

Federal agencies also utilize telework in the continuity of operations planning that they are required to conduct. On May 4, 2007, President Bush issued the National Continuity Policy directive to “establishe[] a comprehensive national policy on the continuity of Federal Government structures and operations.”⁸⁸ In response to the President’s directive, the Department of Homeland Security issued Federal Continuity Directive 1 (FCD 1),⁸⁹ which provided operational guidance for implementing the National Continuity Policy. FCD 1 assigned OPM the responsibility for providing guidance on using telework to support continuity programs, and referenced telework when discussing the identification of alternate facilities, a key element of continuity planning.⁹⁰

Telework is also part of the federal government’s plan to respond to an influenza pandemic. In November of 2005, President Bush released the *National Strategy For Pandemic Influenza*,⁹¹ and a detailed implementation plan was released in May of 2006. As part of the implementation plan, OPM was required to update its telework guidance for managers and employees.⁹²

Despite the increased use of telework in some agencies and the continued valiant efforts by OPM and GSA, there has been a **decline** of telework in a few federal agencies. Two agencies account for the greatest percentage of the overall decrease of federal teleworkers since 2006. The Department of Defense (DOD) reported a decrease of 16,959 teleworkers due to security and resource issues. The DOD attributed these increased security concerns to the current wartime environment.⁹³ The

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ National Security Directive Presidential Directive -51/Homeland Security Presidential -20 (NSPD-51/HSPD-20) available at <http://www.fas.org/irp/offdocs/nspd/nspd-51.htm>. In August of 2007, the National Continuity Policy Implementation Plan was approved by President Bush.

⁸⁹ See <http://www.fema.gov/pdf/about/offices/fcd1.pdf>.

⁹⁰ *Id.*

⁹¹ *National Strategy for Pandemic Influenza* available at <http://www.pandemicflu.gov/plan/federal/pandemic-influenza.pdf>

⁹² See *National Strategy for Pandemic Influenza Implementation Plan*, available at <http://www.pandemicflu.gov/plan/federal/pandemic-influenza-implementation.pdf>.

⁹³ *Id.* DOD reported that the wartime environment has resulted in tighter control over all resources. *Id.* Additionally, because of the high number of civilian employees on the front lines, DOD reports that information and data security are a larger risk. *Id.* DOD also reported that it considered alternative technologies to alleviate these concerns, but that the technology was costly and not necessarily failsafe. *Id.*

second agency, the National Aeronautics and Space Administration (NASA), improved its tracking systems and learned that it had overstated the number of its teleworkers in previous reports by 9,323.⁹⁴

Given the consistent drumbeat of efforts by Congress and OPM over the past two decades to increase teleworking in the federal workforce, it is striking that OPM reports that only approximately 8% of eligible federal workers telework.

The reality is that **barriers to the implementation of telework** have remained relatively consistent over time. A shortage of physical office coverage is reported as a top concern by agencies.⁹⁵ In addition, there are concerns about maintaining an effective organizational culture if many employees telework, challenges in dealing with management resistance, and perceived IT security issues.⁹⁶

Agencies that have adopted telework programs also face the challenge of accurately tracking which employees are eligible for such programs and which employees are actually working remotely. While an increasing number of agencies are using electronic systems to capture this information, manual counting is still prevalent in many agencies and continues to affect accuracy.⁹⁷

The infrequency of telework also presents a challenge that may impact whether an agency will gain the full benefits of the telework options. A successful program requires regular and frequent telework in order to consolidate office space and reduce costs. If an agency uses telework only sporadically, the agency cannot reduce its office expenses reliably.

Finally, information technology challenges are a concern to many agencies. Determining what equipment to purchase, and who will bear the cost of the equipment, affects the success of a telework program. As of 2007, 41% of agencies required teleworkers to purchase their own equipment, while 35% of agencies paid for the equipment.⁹⁸ The remaining agencies either shared the cost with employees or used other methods of financing.⁹⁹

While agencies are not required to use specific equipment, the GSA provides technology guidelines for teleworkers that includes information on the type of equipment necessary for efficient telework, as well as procedures to ensure data security.¹⁰⁰ In

⁹⁴ *Id.*

⁹⁵ *Id.* at 11-12.

⁹⁶ *Id.*

⁹⁷ *Id.* at 7.

⁹⁸ *Id.* at 10.

⁹⁹ *Id.* Agencies are moving away from a model of shared costs. The number of agencies that require employees to purchase their own equipment increased 5% between 2006 and 2007 and there was a 21% increase in the number of agencies that paid for telework equipment.

¹⁰⁰ See FMR Bulletin 2007-B1, 72 Fed. Reg. 41 (March 2, 2007), pp. 9532-35, available at http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/FMR2007-B1ITBulletin_R2HB2C_0Z5RDZ-i34K-pR.txt

addition to this guidance, the National Institute of Standards and Technology (NIST) has issued a publication providing detailed recommendations on securing technology infrastructures used by teleworkers.¹⁰¹

The NIST recommends the following five basic security principles for all telework platforms:

- All home networks connected to the Internet via a broadband connection should have some firewall device installed.¹⁰²
- Web browsers should be configured to limit vulnerability to intrusion.¹⁰³
- Operating system configuration options should be selected to increase security.¹⁰⁴
- Selection of wireless and other home networking technologies should be in accordance with security goals.¹⁰⁵
- Federal agencies should provide teleworking users with guidance on selecting appropriate technologies, software, and tools consistent with the agency network and with agency security policies.¹⁰⁶

IV. Characteristics for Successful Telework in the Agencies

While agencies continue to grapple with barriers to implementing telework programs, a number of agencies have successfully expanded their individual telework programs.

OPM's 2008 Report to Congress reflects information from 80 of the 82 agencies surveyed.¹⁰⁷ The information indicates some characteristics that helped determine whether agencies were or were not successful in using telework – including the type of work at issue, effective evaluation of position requirements, use of innovation, marketing, and training, and use of improved tracking and employee surveys.

¹⁰¹ Special Publication 800-46, *Security for Telecommuting and Broadband Communications: Recommendations of the National Institute of Standards and Technology*, available at <http://csrc.nist.gov/publications/nistpubs/800-46/sp800-46.pdf>.

¹⁰² *Id.*; see also http://www.telework.gov/policies_and_procedures/telework_security/index.aspx.

¹⁰³ Special Publication 800-46, *Security for Telecommuting and Broadband Communications: Recommendations of the National Institute of Standards and Technology*, at x-xi, available at <http://csrc.nist.gov/publications/nistpubs/800-46/sp800-46.pdf>; see also http://www.telework.gov/policies_and_procedures/telework_security/index.aspx.

¹⁰⁴ Special Publication 800-46, *Security for Telecommuting and Broadband Communications: Recommendations of the National Institute of Standards and Technology*, at x-xi, available at <http://csrc.nist.gov/publications/nistpubs/800-46/sp800-46.pdf>; see also http://www.telework.gov/policies_and_procedures/telework_security/index.aspx.

¹⁰⁵ Special Publication 800-46, *Security for Telecommuting and Broadband Communications: Recommendations of the National Institute of Standards and Technology*, at x-xi, available at <http://csrc.nist.gov/publications/nistpubs/800-46/sp800-46.pdf>; see also http://www.telework.gov/policies_and_procedures/telework_security/index.aspx.

¹⁰⁶ Special Publication 800-46, *Security for Telecommuting and Broadband Communications: Recommendations of the National Institute of Standards and Technology*, at x-xi, available at <http://csrc.nist.gov/publications/nistpubs/800-46/sp800-46.pdf>; see also http://www.telework.gov/policies_and_procedures/telework_security/index.aspx.

¹⁰⁷ See *Status of Telework* r2008 at 4.

- **Type of Work:** The ability of an employee to succeed as a teleworker depends on the job functions and tasks that the employee conducts. Therefore, the likelihood that an agency's telework program will be successful will often depend on the job functions of its employees. For example, much of the work conducted at the U.S. Patent and Trademark Office (USPTO) is well suited to telework because the work is easily done remotely, using a computer and telephone.¹⁰⁸ 50% of employees at the USPTO are *eligible* to telework, and of those, 80% are teleworking.¹⁰⁹

Similarly, most employees at the Department of Interior and the U.S. Geological Survey are scientists and the nature of their work lends itself to telework. The agency has approximately 9,000 employees, of whom over half -- 4,570 -- telework. Over 70% of these employees telework at least once per week.¹¹⁰

- **Reevaluation of Tasks and Positions:** Many agencies question the ability of their employees to work from a remote location. However, by evaluating each position and the various tasks that an employee conducts, some agencies have found that certain jobs are more conducive to telework than they had initially realized. For example, the Office of Science and Technology in the Executive Office of the President was hesitant to allow telework due to the nature of its work. After a reevaluation of the work, however, the number of employees who teleworked increased from two in 2006 to eighteen in 2007.¹¹¹
- **Innovation in Requesting Telework:** Some agencies have found that increasing the use of telework is as simple as implementing an online tool that make the process easier for employees to request telework. For example, the U.S. Access Board created an online system for employees to request a telework arrangement, which resulted in a 25% growth in telework for 2007.¹¹²
- **Increased Internal Marketing and Training:** Aggressive marketing and increased training can also bolster the use of telework in an agency. The Farm Credit Administration increased telework by 40% between 2006 and 2007 by enhancing the marketing of such work options and training for employees and managers.¹¹³ Similarly, the Department of Health and Human Services increased telework by 46%, based on active encouragement and support from management, increased marketing, and the development of more accessible training for both management and employees.¹¹⁴

The Peace Corps' approach was to use telework while training its supervisors for their jobs. That resulted in managers being more accepting and encouraging of

¹⁰⁸ *Id.* at 7.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 15.

¹¹¹ *Id.* at 13.

¹¹² *Id.* at 14.

¹¹³ *Id.* at 13.

¹¹⁴ *Id.*

other employees who wished to telework. The Peace Corp also supplies all equipment for teleworkers.¹¹⁵ In 2007, almost 75% of the agency's employees were eligible to telework and participation had almost tripled from the previous year.¹¹⁶

- **Improved Tracking:** A major challenge for telework in the federal government is the lack of an organized tracking system. The Overseas Private Investment Corporation enhanced its reporting and discovered that almost 60% of its employees were teleworking -- a third more than it had previously reported.¹¹⁷ Similarly, the Federal Deposit Insurance Corporation (FDIC) discovered a much higher number of teleworkers when it enhanced its reporting procedures to track teleworkers. While the agency had only 236 teleworkers in 2006, that number increased to 1,644 in 2007.¹¹⁸
- **Employee Involvement/Surveys:** The National Science Foundation (NSF) surveyed all its employees about telework and is using the results to enhance its telework program. The NSF telework coordinator is also collaborating very successfully with the union representing the NSF employees, which has bolstered participation.¹¹⁹

Of course, agencies must address security concerns when implementing an effective telework program. While 37% of agencies cite IT security as a top concern with such programs,¹²⁰ the following agencies have had success dealing with IT security:

- **United States Patent and Trademark Office (USPTO):** At USPTO, 85% of eligible employees are teleworking.¹²¹ The agency is comfortable with its telework security because it provides the equipment for teleworkers, which enables it to implement multiple levels of security, including virtual network technology.¹²²
- **Treasury Inspector General for Tax Administration (TIGTA):** At TIGTA, 85% of department employees telework and 37% of those employees do so 3 days or more per week.¹²³ The agency ensures security by providing webcam-enabled laptops, teaching employees and managers the technical skills necessary to safely use remote access technologies, employing strict guidelines on the

¹¹⁵ *Id.* at 14.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* NASA reported approximately 10,000 telework employees in 2006. *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 10.

¹²¹ A. Greenberg & A. Nilssen, Wainhouse Research, *Telework and the U.S. Federal Government at the Tipping Point: How the Federal Government is One Step Ahead of Unified Communications for Distributed Workers* (August 2008), at 17, available at http://download.microsoft.com/download/C/E/1/CE183043-F211-4334-8A1E-BAA15576D029/Whitepaper_Telework_and_the_US_Federal_Government.pdf.

¹²² *Id.*

¹²³ *Id.* at 18.

personal use of government technology, and applying mandatory security requirements.¹²⁴

- **National Aeronautics and Space Administration (NASA):** NASA has taken the more comprehensive approach to telework security by providing government-issue laptops and Virtual Private Network (VPN) capabilities. The agency is also moving towards more elaborate security approaches, such as card readers in addition to password protection.¹²⁵
- **National Institutes for Allergy and Infectious Diseases (NIAID):** At NIAID, 500 employees telework. Prior to beginning telework, an employee must complete telework training.¹²⁶ Upon completion, the agency provides a pre-configured laptop and secure remote access via VPN technology and Citrix.¹²⁷ The agency continues to support the equipment remotely by providing regular security patching, antivirus management, and remote helpdesk support.¹²⁸

V. Conclusion

As the largest employer in the United States, the federal government is an ideal laboratory for developing flexible work arrangements that benefit employers, employees and society as a whole. Given valiant efforts by Congress and OPM, the federal government has come a long way in offering telework as a valuable FWA for its employees. Nevertheless, with less than 8% of eligible employees actually taking advantage of telework, there is clearly room for improvement.

The agencies that are successfully using telework programs can share what they are doing with other agencies, even as they continue to improve their own programs. Ultimately, the improvements made to the government's telework policies can also serve as a model for other FWAs offered by the federal government.

¹²⁴ *Id.*

¹²⁵ *Id. at 18-19.*

¹²⁶ Getting Started A Telework Pilot Program, (March 18, 2009) *available at* http://www.teleworkexchange.com/pilotwebcast/Telework_Pilot_Webcast_031809_FINAL.pdf.

¹²⁷ *Id.*

¹²⁸ *Id.*